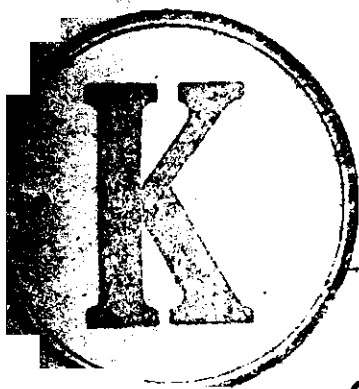


1952.

File No. ^{O. Town} Plan /52

Legal Deptt.



A BRANCH

Subject:—Opinions under the
Bombay Town Planning
Act 1915

22/3/52

on Plan /52

File No.

Gen. 194 e.

CONTENTS

Legal Department File No. O. Town Plan/52.

Sr.	R.I./	O.No.	Subject	Pages.
1.	<u>84530</u> 27-11-52		Opinions under the Bombay Town Planning Act, 1915. Whether the notification the question published by the Surat Borough Municipality can be considered to be legally in order inspite of the fact that it is not dated for signed by the President.	2-3-
2.		<u>1089</u> 23-1-52	Whether the three separate varied schemes prepared and published by the municipality are in order- under section 40(I) of the B'bay Town Planning Act 1915	5-7
3.	<u>8246</u> 25-4-52	<u>9734</u> 12-6-52	Whether the validity of the notification published in the official Gazette and repudiated the necessity for their client of obtaining the "Commencement certificate."	9-11
4.		<u>8710</u> 24-5-52	Town planning Scheme- Town Planning Act 1915- Section 14(2).	13
5.		<u>2549</u> 7-6-52	Whether it is necessary that the application for extension of the period should be made in writing by the local authority under rule 8(I) of the rules made under the B'bay Town Planning Act 1915.	15
6.		<u>12230</u> 21-4-52	Whether While preparing a Draft varied Scheme, section 27 of the B'bay Town Planning Act 1915 can be resorted to for the purpose of modifying and relaxing the regulations of a finally sanctioned Town Planning scheme-	17

201
717

S.R. No.	R.IV	O.No.	Subject	Pages
7.		<u>11939</u> 19-7-52	Whether the application for extension of the time limits under rule 8(1) should be made or not -and for that extent it was a restriction on the powers of the Commissioner delegated to him by section 68(I) of the B'bay Provincial Municipal Corporation Act 1949.	191-21
8.		<u>744-conf1</u> 31-7-52	Variations could be said substantial and which of them ~~sub~~ -substantial and whether they could be mutually settled by the arbitrator and the the Municipa Commissioner-- Second provision for section 30(10) of the B'bay Town Planning Act 1915.	23
9.		<u>13149</u> 11-8-48	B'Bay Town Planning Act 1915 -Section 15(1) commencement certificate.	25-27
10.		<u>14878/A</u> 11-9-52	B'bay Land Revenue Code 1879 to indicate that section does not operate in cases whether the Govt. of India wishes to relinquish land.	29
11.		<u>1301-A</u> 25-11-52	B'bay Town Planning Act 1915-- Which the new Arbitration may be fixed ~~re-remuneration~~ remuneration irrespective of the time.	31
12.		<u>21758-A</u> 24-12-52	Kajol Town Extension Scheme was sanctioned by the Borad Govt. under section 50(1) of the City Improvement and Town Planning Act.	33

27-11-51

p.35ant

PP.30& B.G.G
pt.II of 1951).

At the Special General Meeting convened on 26th Feb. 1951, the Surat Borough Municipality passed three separate resolutions Nos. 89, 90 and 91 declaring its intention under section 9(1) of the Bombay Town Planning Act, 1915 to make town-planning schemes in respect of different lands shown in Plans Nos. I II and III respectively. Subsequently, however, at its special general meeting held on 28-2-51, the Surat Borough Municipality by its resolution No. 19 resolved to drop its proposal to frame Town-Planning Scheme No. III. As required by section 9(2) of the Bombay Town planning Act, within 2 days from the date of making such declaration the Surat Borough Municipality despatched a copy of such declaration for publication in the Official Gazette. The declarations of intention to make the said three schemes were published in the B.G.G. dt. 15-3-1951. As regards the notification so published, the consulting Surveyor Govt. remarks as follows:-

"that in the Notifica. which has appeared in the B.G.G. referred to above, the place, date and signature of the President have not been printed as is usual in such cases. The notification duly indicates that it is a declaration of intention ~~to make a Town Planning scheme under sect. 9(1) of the~~ Bombay Town Planning scheme under sect 9(1) of the Bombay Town Planning Act by the Municipal Borough of Surat and also gives the date when the declaration was made. In the circumstance, it does not appear that the absence of the President's signature in such notifica., place and date would render the declaration invalid so as to necessitate the whole procedure to be gone through do novo".

R.L.A. is requested to advise whether the notification in question published by the

... can be considered to be legally
... order inspite of the fact that it is not dated
nor signed by the President.

Seen and returned

The presumption made by the consulting
surveyor to Govt. at 'A' on p.21 ante is
correct.

F.T.K.

Sd/-
7-1

Addl. Secy.

Sd/-
7-1

U.R. to L.S.G. and P.H.D.

No. 182 dt 8-1-52.
182-A

M.R.D.
15-6-56
C.4

Office of the R.L.A.

It appears that under section 40(1) of the Bombay Town Planning Act, 1915, Government sanctioned the final Town planning schemes, panchgani, Nos. I, II, and III under G.D. Notifications Nos. 1091 dated 23rd January 1923, 1092 dated 25th March 1925 and 1093 dated the 14th November 1933, respectively. However, it was found later on that these schemes required to be amended under section 46(1) of the Bombay Town Planning Act. The panchgani Municipality passed a resolution No. 86 dated 22nd December 1947 declaring its intention to vary those three schemes by making a new scheme. Accordingly under section 9(2), the Municipality published in the Bombay Government Gazette a declaration of its intention to make the said scheme and applied for Government sanction under section 9(6) which Government sanctioned by G.R., H.&L.G.D. No. 2995 dated 20-5-49 and H.&L.G.D. Notification No. 2995 dated 20-5-49. Instead of preparing one draft scheme as originally desired and sanctioned by Government, the Municipality in exercise of the powers conferred by section 10(1) prepared three draft varied schemes Nos. I, II and III and approved by its resolution No. 45 dated 5-5-1950 and then published them. Under section 13 objections to the draft schemes were invited and considered, whereafter the Municipality approved by its resolution No. 78 dated 19-5-1950 the three draft varied schemes and submitted them for Government sanction under section 14(1). It is apparent from these facts that though Government sanctioned the making of one combined scheme in respect of the three town planning schemes, the Panchgani Municipality has actually prepared three separate varied schemes respecting the three principal schemes separately. The L.S.G.&P.H.D. considers that the three separate varied schemes prepared and published by the Municipality do not seem to be in order. The consulting surveyor in his endorsement dated 18th October 1951 has stated that there will be no change whatsoever in the three separate schemes now prepared if

7
They were to be combined into one scheme except that they will virtually be tacked on together. The R.L.A. is requested to advise.

2. The view taken by the L.S.G.&P.H.D. is correct. The intention of the Municipality as declared by its resolution dated 22-12-1947 was to prepare one draft varied scheme instead of the three final town planning schemes and Government accorded sanction to so making one varied draft scheme. Instead of making such scheme, the municipality prepared three draft varied schemes varying the three original final schemes Nos. I, II and III respectively. There is no provision in the Bombay Town planning Act empowering the Municipality to prepare more than one scheme when sanction for making one scheme only is granted by Government. Under section 44A in Chapter IV-A of the Act powers are given to the arbitrator to split a draft scheme into separate sections and to deal with each section separately as if each section were a separate draft scheme. There is no provision in the Act empowering the unification of more than one draft scheme. Consequently the procedure followed by the Municipality in making three separate draft varied schemes instead of one is not correct. These draft schemes will have to be allowed to lapse and the Municipality shall have to take fresh steps for obtaining sanction of Government for making one varied draft scheme and follow the procedure prescribed by the Act.

3. The second question raised by the L.S.G.&P.H.D. regarding the limitation under section 14(2) does not arise in view of the reply to the first question.

Sd/-
23-1

Remembrancer of Legal Affairs

U.R. to L.S.G.&P.H.D. No. 1069, dated the 23rd January 1952.

M.R.D.
16-6-56
C.4

By Notification issued by Government under section 1(3) of the Bombay Town Planning Act, 1915, the said Act was extended to the City of Bombay with effect from 8-2-1951 and a declaration of intention to make Town Planning Scheme No. 3., was published on 8-2-1951. Dr. Chavan's building at Mahim lies in the said Town Planning Scheme No. 3.

Under section 15(1)(a) of the Act read with rule 9 of the Rules framed under section 52 of the Act, the party was requested to apply for and obtain a 'commencement certificate' in the prescribed form. At this time, the party had completed the first floor work and the second floor work was in progress. The Solicitors for Dr. Chavan questioned the validity of the notification published in the Official Gazette and repudiated the necessity for their client of obtaining the "commencement certificate". In Government Letter No. 7019/33/5443

dated 29/11/1951, the Solicitors were informed that Dr. Chavan was bound by the provisions of the Town Planning Scheme and that if their client applied to the Municipal Commissioner for the commencement certificate, due consideration will be given by him to the existing construction work etc. The Chief Editor, Law & Order, Bombay however, contends that "Commencement certificate" is necessary in respect of a building the construction of which ^{had} commenced and that as the construction of the building had commenced long before the intimation was published by the Municipal Commissioner and on which construction work was proceeding, needs no commencement certificate. In support of this view, he states that if the intention of the legislature was to apply the said law to the buildings of which construction had already started before the publication of intimation, the words in section 15 would

~~in, ceate, pf ente, atepn, tje~~
~~publication of intimation, the words in section~~
~~15 would have been "continuation certificate"~~
and not "commencement certificate". The Chief
Editor, Law and order is proposed to be informed
on the lines of draft at page 4 ante. Paperes are
shown to R.L.A. before issuing the reply.

M.R.D.
16-6-56

Official of the R.L.A.

Seen and returned.

2v. A sentence may be added in the latter drawing attention to the words "proceed with any building of work" in the operative part of the section and observing that the expression "commencement certificate" cannot control the plain meaning of that provision.

Sd/-
12-6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No 9794 dated the 12th June
1952.

M.R.D.
16-6-56
C.4

OFFICE OF THE R.L.A.

Town Planning scheme
Town planning Act,
1915-sec.14(2).

THE scheme was submitted to Government in November 1946 i.e. after the amending Act of 1938 had come into force. Section 14(2) provides that after receiving such application and after making such inquiry as it may think fit, the State Government may, within the period prescribed by notification in the Official Gazette either sanction such scheme with or without modifications and subject to such conditions as it may think fit to impose, or refuse to give sanction. It has often been held that when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that Act was directory only and might be complied with after the prescribed time (Maxwell on Interpretation of Statutes, p.380). As the provisions of section 14(2) are directory, there would be no objection to Government granting the sanction even after the prescribed period has elapsed.

Sd-/-

Remembrancer of Legal Affairs.

U.R. to L.S.H.&P.H.D. No. 8710, dated the 24th
May 1952.

M.R.D.
16-6-56
C.4

The proviso to rule 8(1) of the Rules made under the Bombay Town Planning Act, 1915, requires that the application for extension of the period should be made in writing by the local authority. "Local authority" has been defined in section 2(a) to mean a municipality, and by virtue of para. 1 of Appendix IV to the Bombay Municipal Corporations Act, 1949, it will mean in this instance the Corporation of Ahmedabad. The four months required by sub-rule(1) of rule 8 expired on 1st March 1952. No doubt a communication was sent by the Municipal Commissioner of Ahmedabad on 26th February, i.e. before the expiry of the four months' period. That communication itself promises to send the resolution of the Municipal Corporation as early as possible. The resolution of the Town Planning Committee of the corporation which was passed on 16.2. 1952 provides that it should be confirmed by the corporation. Reading this resolution and the communication together, it is obvious that it was the corporation which was expected to decide whether the application for extension should be made or not, and in sending the communication the Municipal Commissioner was not making the application in exercise of the power conferred upon him by section 68(1) of the Bombay Municipal Corporations Act. 1949. That decision was not taken by the Corporation till the 16th of March 1952, i.e. after the expiry of the four months' period. It has been held by the R.L.A. in his opinion No. 6054 dated 14th August 1945 that when the limit of four months prescribed under rule 8(1) has expired the right of the municipality to submit the draft scheme lapses, and that, therefore, it would not be competent for Government to grant

ex post facto

competent for Government to grant ex post facto sanction to the extension of the period under the proviso to rule 8(1).

Please also see R.L.A.'s opinion No.
11939dt 19-7-52

Sd-/-
7-6

Remembrancer of Legal Affairs.

U.R.to L.S.G.&P.H.D.No. 9540,dated 7th June 1952.

MR.D.
161-6-56
C.4

12250
21-6-58

In P.L.A.'s opinion No. 15668 dated 3rd October 1951 the question considered was whether while preparing a draft varied scheme section 27 of the Bombay Town Planning Act, 1916 can be resorted to for the purposes of modifying and relaxing the regulations of a finally sanctioned Town planning scheme. After examining the provisions of sections 40 and 46 of the said Act it was held that section 27(1) would be available only when a new scheme is under preparation and not when a varied scheme which is to replace a final scheme sanctioned by Government is under consideration.

The legal position so stated was communicated to the Municipal Commissioner for Greater Bombay and he was informed that section 27 of the Act cannot be resorted to for the purposes of modifying or relaxing the regulations of a finally sanctioned Town Planning scheme while it is under variation and that the agreements entered into by the Bombay Municipality with certain parties are ^{eu}irregular.

In the present reference the B.L. Ruia Charitable Trust applies to the Minister of Education requesting to grant permission to erect a second floor to the school building under construction on plots 60, 61 and 62 of the Town Planning scheme, Vile-parle. This matter was discussed at a conference with H.M. (Law and Education) and H.M. (L.S.G.), and it was agreed that in view of the fact that Government is adopting the policy of an additional story in all suburban areas in which restriction on the erection of such story existed in the Town Planning schemes and Development schemes, and as in accordance with the said policy the Vile-Parle Town Planning scheme will be varied no objection should be raised to the

construction of an additional storey in the present case if the Municipal authorities are satisfied that the building is in a sound condition to bear such addition. The L.S.G. & P.H. Department considers that the decision taken in this case conflicts with the R.L.A.'s opinion No. 15668 dated 3rd October 1951. R.L.A. is therefore, requested to advise whether in view of the note of the Additional Secretary, legal Department, dated 6-6-1952 the R.L.A.'s opinion would still hold good.

There appears no conflict between R.L.A.'s opinion No. 15668 dated 3-10-1951 and the view expressed in the Additional Secretary's note dated 6-6-1952. In the Additional Secretary's note it is implied that the construction of additional storey should be in accordance with the Vile-Parle Town planning Scheme as varied by the Municipality under section 46(1) of the Bombay Town Planning Act.

Sd/-
5/7
D.S. (Civil). R.T.K.
Sd/7-7

Addl. Secy. Reply.

The decision embodied in the note at P.6 ante was taken at a ^{conference} as w/ (cc) H.M. (Law) H.M. (L.S.G.) and Secy. (L.S.G) were present. for the reasons state were in it was agreed that no objection should be raised to this construction of an additional storey by the Ruia trust. No question of law arises.

U.R. to L.S.G. and P.H.D.

No, 11416 dt 10-7-52

Sd/-
8-7

M.P.D.
16-8-52
C.4

It is undisputed that under section 68(1) the Commissioner can exercise the the powers and perform the duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force subject to the provisions of that law and to such restrictions, limitations and conditions as the Corporation may impose. Assuming that the law, namely, the Town Planning Act, does not place any limitation and that the corporation too has not imposed any restrictions, limitations, etc, the Commissioner could have made the application. It must, however, be remembered that the section merely authorises the commissioner to exercise the powers, etc. whether he has actually so exercised them must remain a question of fact. The facts in this case establish beyond doubt that the Commissioner has not acted under section 68(1). In the first place, it was open to the Commissioner to say that he was writing the letter specifically by reference to section 68(1). That has not been done. On the other hand, the whole tenor of the correspondence, which has been discussed in the R.L.A.'s opinion, clearly shows that every one concerned was expecting the corporation to exercise the function. The second proviso to sub-section(6) of section 30 has not been pressed into service as can be seen from the wording of the resolution passed by the Committee. The very fact that the Committee was approached, that the Committee directed that the Corporation's confirmation should be obtained makes it clear beyond doubt that it was not the Commissioner who was exercising the Corporation's powers under section 68; because, if he was so exercising them, there was no necessity for him to approach the Committee or the Corporation for confirmation. The mere fact that the application was signed by the Commissioner as the chief executive officer of the Corporation cannot be taken to mean, in

- 2 -

view of its contents and the accompanimentsst that
he purposed to make it under section 68(1). The
R.L.A. therefore, sees no reasons to reconsider
his opinion No 9540, dated the 7th June 1952.

Sd/-

18-7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 11939 dated the 19th
July 1952.

M.R.D.
16-6-56
C.4

Legal Department

The Local Self Government and Public Health Department has not raised any specific point or points on which the R.L.A.'s opinion is requested. It appears that the Arbitrator, Town Planning scheme, Bombay City No.I. has proposed certain variations from the draft scheme and is emphatically of the opinion that these variations are not substantial within the meaning of the second proviso to section 30(10) of the Bombay Town Planning Act, 1915. The Municipal Commissioner is-- equally emphatic that the variations proposed by the Arbitrator are substantial. In view of the fact that the Bombay Town Planning Act makes no provision for either an appeal or a revision against the order of the Arbitrator as to whether a variation proposed by him from the draft scheme is or is not substantial, it has become difficult for the administrative Department to resolve the difficulty.

It appears that, if no early steps are taken to solve the difficulty, it is likely to lead to a deadlock. It may, therefore, be suggested to the L.S.G. & P.H.D. to arrange for a conference between Secretary, L.S.G. & P.H.D., the Arbitrator, the Municipal Commissioner and the R.L.A. to decide whether the variations proposed by the Arbitrator would or would not amount to substantial variations; and if the Arbitrator is unable to accept the decision of the R.L.A., the only course left open to Government would be to revoke the reference to arbitration and to appoint another Arbitrator to carry on the work.

Sd/-
30-7

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 744-conf dated the 31st July 1952.

Office of the P.L.A.

Bombay Town Planning
Act, 1915.

Section 15(1).

Commencement
certificate,

It appears that the Karad Municipality with the sanction of Government has declared its intention on 1-7- 1949 to make a Town Planning Scheme in respect of the area and that declaration has been published duly under section 9(2) of the Bombay Town Planning Act, 1915. Section 15(1)(a) provides that when a local authority has published a declaration of intention to make a scheme, no person shall within the area included in the scheme erect or proceed with any building or work or remove, pull down or alter any building or part of a building or remove any earth, etc, unless such person has applied for and obtained the necessary permission which shall be contained in a commencement certificate granted by the local authority in the form prescribed. Under clause (b) of that sub-section, the local authority is given power either to grant or to refuse such certificate or grant it subject to such conditions as the local authority may, with the previous approval of the State Government, think fit to impose. In the present case the market yard of the Agricultural produce Market Committee, Karad, has been included within the area for which the Karad Municipality has declared its intention to make a Town Planning Scheme. Consequently, the Karad Agricultural produce Market Committee could not proceed with the construction of any building save with the previous permission of the Karad Municipality. It is true that the Karad Agricultural produce Market Committee did apply for a permit under clause (b) of section 15 (1) but the Karad Municipality refused to issue any certificate. That refusal may or may not be reasonable but there being no provision against-

against that order of refusal, the Karad Agricultural Produce Market Committee should not have proceeded with the construction of buildings. Since that Committee has constructed the building in contravention of section 15(1)(b), it would be liable to the penalties prescribed by clause (e) of that sub-section. Government has no power to interfere with the orders passed by the Karad Municipality under section 15(1)(b) and it would not be possible for Government to render any assistance to the Karad Agricultural Produce Market Committee. Government, may however, ask the Collector to persuade the Karad Municipality to grant permission ex post facto in view of the fact that the Agricultural produce Market Committee is a corporation and the mistake, if any, committed by it in proceeding with the construction without the previous permission was merely bona fide and should be condoned.

Sd/-

7-8

Remembrancer of Legal Affairs.

U.R. to L.S.G.&P. BFD No. 13149 dated the 11th August 1952.

M.R.D.
16-6-55
C.4

OFFICE OF THE R.L.A.

In the final Town Planning scheme No. II, Chhatkopar, Plot No. 81 which had been assigned to the G. I. P. Railway in place of plot No. 10A originally held by them had not been specifically reserved for the purpose of the Railway. In the absence of any such reservation in the Scheme it would be open to the Railway Administration to make use of plot No. 81 in the same way as they could have used the original Plot No. 10A. As plot No. 81 now belongs to the Central Government and as apparently the Railway Administration does not need the area occupied by the Maruti temple for the purposes of the Railway it would be competent for that Administration to surrender the land in favour of the Bombay Government. But such relinquishment would not attract the operation of section 74 of the Bombay Land Revenue Code, 1879.

sd/- P. M. L.

Remembrancer of Legal Affairs.

U. E. to R. D, No. 14879-A, dated the 11th September 1952.

Kx

MRD.
18/6. c/5-

Legal Department

Bombay Town
Planning Act, 1915.

Section 30 of the Bombay Town Planning Act, 1915 provides that the arbitrator has to make an award in accordance with the procedure prescribed. Rule 14 of the rules made under section 52 of the Act lays down the procedure which the arbitrator has to follow. It is stated in the papers that the practice in the Town Planning Department was for the new arbitrator to commence from the stage where his predecessor had left and it is also true that sub-rule (5) of rule 14 provides that the proceedings need not be conducted with the formalities of Judicial proceedings. But all the same the proceedings are of a quasi judicial nature and it would be wrong to hold in the absence of an express provision to that effect, either in the Act or rules, that such procedure can be followed in the present case. The new arbitrator may make use of the material collected by his predecessor, but the procedure prescribed under rule 14 including that of issuing notices to the persons interested and hearing them should be taken ^e de novo.

Sd/-
25/11

Additional Secretary to Government.

U.R. to L.S.G.&P.H.D. No. 1301/A dated the

25th Novr. 1952.

M.R.D.
16-6-56
C.4

There is no doubt that the Kalol Town Extension scheme was sanctioned by the Baroda Government under section 50(1) of the City Improvement and Town Planning Act, and in exercise of power conferred by section 50(2), Government directed that the scheme shall be published by the Chief Engineer. Government also directed as required by section 50(3) that the said scheme shall be executed by the Municipalities concerned. By virtue of para 5(i)(c) of the Baroda State (Application of Laws) Order, 1949, the City Improvement and Planning Act in force in Baroda corresponding to the Bombay Town Planning

Act, 1915, has been repealed and all the orders, notifications, schemes, by-laws, and all rules made under that Act have also been repealed under para 5(ii). para 5(iii), however, provides that the repeal of any such enactment, notification, scheme or order shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof. The result is

that when under para 5(ii) of the Baroda State (Application of Laws) order, 1949, the Kalol Extension scheme itself stands repealed, the question of variation of the Scheme under the Bombay Town Planning Act, 1915 as proposed by the R.D. does not appear to survive (C.R.L.A.'s No. 11889 dt. 26.7.51). The repeal of the scheme would not, however, affect the right, title, obligation or liability acquired, accrued or incurred or any remedy or proceeding in respect thereof and if the municipality wants to acquire lands which under the scheme have vested in others, that will have to be done under the Land Acquisition Act and not under the Bombay Town Planning Act.

Sd/-

24-12

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 21753/A Dated the 24th 1952.